



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES L. AND ELLENM. DONICA)

For Appellants: Charles L. and Ellen M.
Donica, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

John D. **Schell**
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Charles L. and Ellen M. Donica against a proposed assessment of additional personal income tax in the amount of \$24.54 for the year 1966. Subsequent to the denial of their protest by respondent Franchise Tax Board, appellants paid the proposed deficiency and, accordingly, under section 19061.1 of the Revenue and Taxation Code we shall treat this matter as an appeal from the denial of a claim for refund.

The question presented is whether respondent properly reduced the amounts of appellants' claimed personal exemption and exemptions for dependents.

Appellants **were residents** of Downey, California, for the first eight months of 1966, and **during** that time al2 their income had a California source. The remainder

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of the year they were residents of Broken Arrow, Oklahoma, and none of their income during that time, was derived from sources in California. Appellants **paid** income tax to the State of Oklahoma. They **also** filed a 1966 California nonresident personal income tax return reporting California adjusted gross income **of \$7,925.28**. On that return appellants stated that they were residents of Oklahoma, and that total income shown on their 1966 federal **return was \$14,330.39**. They claimed the full \$3,000 personal **exemption** for married persons and full exemptions for four dependents, **totaling \$2,400, in** computing their **California** taxable income.

Respondent allowed only **\$2,986.20** of the claimed personal exemption and exemptions for dependents (55.3 percent of the \$5,400 claimed) on the basis that this was the ratio of income from California sources **(\$7,925.28)** to total adjusted gross income **(\$14,330.39)**. This reduction resulted in a higher California taxable income and the issuance of a notice of additional tax proposed to be assessed. Because of respondent's action, appellants contend that they have been subjected to **unconstitutional** double taxation on their Oklahoma income for the last four months of 1966.

During the year in question section 17181.5 of the Revenue and Taxation Code provided in part:

Any individual who is **a nonresident** for all or any portion of the taxable year shall deduct the minimum standard deduction provided by Section 17171 and the deductions set forth **in this** article, in the proportion that such individual's adjusted gross income from California sources bears to his adjusted gross income from all sources.

It is readily apparent that in applying section 17181.5 no tax was imposed upon appellants' income derived from Oklahoma sources. The above code provision provided that the ratio of adjusted gross income from California sources to their adjusted gross income from all sources was to be used to determine the proportion of personal, exemption and exemptions for dependents which appellants

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could deduct from their California **income**. Under the circumstances, appellants were only subjected **to** tax on their income derived from California sources and **they** were allowed proportionate exemptions. It is also noted that Oklahoma has a substantially similar statutory provision (see Okla. Stats. tit. 68, § 2309, **subd.** (e)).

On the basis of the record before us, we conclude that the application of section 17131.5 did not result in unconstitutional taxation of appellants' Oklahoma income. Under the circumstances the action of **respondent** must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND **DECREED**, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in

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denying the claim of Charles L. and Ellen M. Donica for refund of personal income tax; in the amount of \$24.54 for the year 1966 be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of November, 1970, by the State Board of Equalization.

George H. Hume, Chairman
John W. Lynch, Member
and R. J. [unclear], Member
Pilot Hume, Member
_____, Member

ATTEST:

[Signature], Secretary